

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NOVARTIS VACCINES AND DIAGNOSTICS,
INC., NOVARTIS PHARMA AG, and GRIFOLS
WORLDWIDE OPERATIONS LIMITED,

Plaintiffs,

v.

REGENERON PHARMACEUTICALS, INC.,

Defendant.

Civil Action No. 1:18-cv-02434(DLC)

JUDGMENT OF NONINFRINGEMENT AND ORDER OF DISMISSAL

WHEREAS Plaintiffs Novartis Vaccines and Diagnostics, Inc., Novartis Pharma AG and Grifols Worldwide Operations Limited (collectively, "Novartis") have alleged in this action that Defendant Regeneron Pharmaceuticals, Inc. ("Regeneron") infringes U.S. Patent No. 5,688,688 ("the '688 patent");

WHEREAS the Court entered a judgment of noninfringement of claims 1, 2, 4, 5, 6, 8, 9, 13, and 14 on April 1, 2019 (D.I. 188);

WHEREAS the only claim that remained at issue in this action is claim 17 of the '688 patent;

WHEREAS the Court issued its Claim Construction Opinion and Order regarding additional claim terms on August 14, 2019 (D.I. 295), which is incorporated by reference herein;

WHEREAS the Court construed "mammalian polypeptide" as "a polypeptide that is found naturally in a mammal" (*id.* at 23);

WHEREAS the Court explained that Regeneron's "Aflibercept is a fusion protein that was engineered from portions of three different human proteins. Aflibercept is not a protein that is found in nature" (*id.* at 6);

WHEREAS Novartis concedes that Regeneron does not infringe claim 17 of the '688 patent under the Court's construction of "mammalian polypeptide" and its explanation of Aflibercept;

NOW THEREFORE, pursuant to Rule 41(a)(2), Fed. R. Civ. P., Novartis and Regeneron, subject to approval of the Court, hereby stipulate and agree as follows:

1. Regeneron's manufacture, use, offer for sale, sale, or importation into the United States of aflibercept does not infringe the claims of the '688 patent.
2. The parties request and the Court hereby enters a Judgment of Noninfringement of the claims of the '688 patent in Regeneron's favor.
3. Novartis's claims are DISMISSED WITH PREJUDICE.
4. Regeneron's counterclaims of unenforceability for prosecution laches and inequitable conduct and invalidity are DISMISSED WITHOUT PREJUDICE, and shall not be reinstated or re-filed (e.g., via counterclaim or declaratory judgment action) in this or any other forum unless the '688 patent is re-asserted against Regeneron.
5. Regeneron will not pursue its fees or costs for defending this action, including under 35 U.S.C. § 285. Each party shall bear all of its own fees and costs in connection with this action.

6. No party shall appeal or otherwise contest this Judgment of Noninfringement and Order of Dismissal or any other orders or judgments in this action entered prior thereto.
7. Within one (1) week of entry of this Judgment of Noninfringement and Order of Dismissal, Regeneron shall request to terminate its Petition for *Inter Partes* Review of U.S. Patent No. 5,688,688 in Case No. IPR2019-01086 before the U.S. Patent Trial and Appeal Board (the "Board"). The parties shall cooperate as necessary to make any necessary filings with the Board in connection therewith.
8. The Court retains jurisdiction to enforce this Judgment of Noninfringement and Order of Dismissal.

Dated: August 30, 2019

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SO ORDERED:

Hon. Denise L. Cote, U.S.D.J.

Dated: _____, 2019